IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03-10-2007

Coram :

The Hon'ble Mr. Justice ELIPE DHARMA RAO
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.25387 of 2002

L.Selvarajan ... Petitioner

vs.

1. The Deputy Inspector General of Police
Trichy Range, Trichy.

2. The Superintendent of Police
Thanjavur District, Thanjavur.

3. The Tamil Nadu Administrative Tribunal,
Chennai - 104. .. Respondents

Writ Petition, seeking certiorarified mandamus is filed by the petitioner, under Article 226 of the Constitution of India, to call for the records of the third respondent, the Tamil Nadu Administrative Tribunal, Chennai, dated 12.10.2001, made in O.A.No.4249 of 1991 and to quash the same and also direct the respondents 1 and 2 to reinstate the petitioner into service forthwith, together with all attendant benefits and other consequential service benefits.

For Petitioner : Mr.G.Rajagopal
Senior Counsel for
Mr.A.Thirumutrhy

For Respondents : Mr.C.Ramesh, AGP

WEB COPY

O R D E R

S.TAMILVANAN, J

This writ petition is preferred by the petitioner / applicant against the order, dated 12.10.2001 made in O.A.No.4249 of 1991 by the Tamil Nadu Administrative Tribunal, whereby the Original Application was dismissed.

https://hcservices.ecourts.gov.in/hcservices/

2. The brief facts of the case are as follows :

The petitioner was appointed as Gr.II Constable in 1976. While so, on 31.09.1989, at about 4.45 a.m, (in the early morning), when the petitioner and the station writer, one P.C.841, Gnanaprakasam were in the Perugavazhanthan police station on duty, the Revenue Divisional Officer of Mannargudi suddenly came to the said police station and asked the station writer to send a Police Guard to take care of a seized lorry, bearing Registration No.TNB 9670 along with 216 bags of smuggled paddy. The lorry was parked near by Pamini River Bridge, which is 2 ½ kms away from the said police station, as per the FIR. The aforesaid station writer accordingly, sent the petitioner with the Revenue Divisional Officer, Mannargudi to the said spot, where the lorry had been parked. The Revenue Divisional Officer, then left the place, informing the petitioner that he would ask the concerned Tahsildar and the Taluk Supply Officer to the place and instructed the petitioner to guard the vehicle.

3. According to the petitioner, after the Revenue Divisional Officer went from the spot, six persons came out from a nearby bush and attempted to take away the lorry, when the petitioner prevented the same, they attacked the petitioner by hands and pushed him in to a nearby pit of well grown bushes and also took away the lorry at about 5.15 a.m.Then he came to the police station at about 6.30 a.m and gave a complaint before the station writer about the occurrence.

4. It is seen from the records that on 10.05.1990, charges were framed against the writ petitioner in P.R.No.17 of 1990, subsequently enquiry was also conducted and as per the enquiry report, dated 31.10.1990, the charges were held to be proved against the petitioner. The main charge was that the petitioner had failed to guard the lorry with 216 bags of smuggled paddy, but connived with the accused persons and falsely reported that he had been attacked by the accused persons. Based on the finding, by order dated 19.02.1991, the petitioner was removed from service by the Superintendent of Police, Thanjavur District, the second respondent herein. Aggrieved by which, the petitioner preferred the Original Application before the Tamil Nadu Administrative Tribunal, Chennai.

5. The Administrative Tribunal has upheld the finding as well as the order of removal passed by the contesting respondents and thereby dismissed the Original Application filed by the petitioner. Challenging the aforesaid order, the petitioner has preferred this writ petition.

6. Mr.G.Rajagopal, learned senior counsel appearing for the petitioner submitted that the respondents have failed to considered the cogent and corroborative evidence of the petitioner herein, which is supported by medical evidence and also the evidence of the sweeper of the police station, who was examined as defence witness. According to him, in holding the finding against the petitioner, principles of natural justice

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

was not followed by the respondents. Though a criminal case in Cr.No.226 of 1989 against the accused persons had been registered, subsequently, the same was closed as mistake of fact, but, the petitioner was made as a scapegoat and victim, though the occurrence had taken place beyond the control of the petitioner herein. The learned counsel further contended that as per the finding of the enquiry officer, the petitioner had belatedly reported the incident at 10 a.m, on 31.08.1989, the date of occurrence, though the occurrence had taken place between 4.30 a.m and 5.15 a.m on the said date, but the petitioner came from the scene of occurrence and reported the same at 6.30 am and the case was registered at 8.30 a.m, as per the FIR registered at the police station. He would further contend that as per the police standing order, every escord must be of at least two police officials and if necessary with arms and ammunition. But in this case, the petitioner alone was sent near Pamini River Bridge, an uninhabited area to guard the parked lorry, which was used for illegally transporting 216 bags of paddy.

7. The Tribunal in the impugned order has held that there is a definite finding by the authority / enquiry officer that the incident having been reported by the petitioner in Perugavalanthan police station was at or after 8 hrs on the date, though the occurrence had taken place around 5.15 a.m, at a distance of 1 ½ Kms from the police station and confirmed the finding that the petitioner had failed to report the incident immediately at the police station. It is seen that the impugned order is mainly based on the finding of the enquiry report, which would be as under :

> "Convenience with the alleged criminals in taking away the seized lorry could not be also ruled out under the circumstances of the case as discussed above, though there is no corroborating evidence to that. However, the conduct of delinquent subsequent to the occurrence in reporting late the occurrence to the concerned, points to that direction only."

8. As contended by the learned counsel for the respondents, we are of the view that in the writ petition filed under Article 226 of the Constitution, this court cannot interfere with the findings of the Tribunal, unless there is manifest error of law or finding, that is totally contrary to evidence and materials available on record, leading to miscarriage of justice.

9. It is not in dispute that the following three charges were framed against the petitioner :

> " Charge 1: Gross neglect of duty and reprehensible conduct in failing to guard the lorry TNB 9670 with 216 bags of smuggled paddy which was seized and parked under Pamini Bridge by R.D.O, Mannargudi, under your custody on the early hours of 31.08.89 and conniving with the accused persons concerned in Perugavalanthan

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

PS Cr.No.226/89 u/s 6 of TNEC Act, 1955, 3 & 4 (1) TNEC Trade Regulation Act, 1984, 3 (i) (a) TNPS Movement Control Order, 1982, 332, and 397 IPC in allowing the above lorry with its ladden to be taken away by them;

Charge 2 : Gross indifferent attitude in reporting falsely at Perugavalantham PS as if vigorous force was used on you to push down on the 15 feet depth of river bridge, whereas the wound certificate issued by Dr.P.Elangovan does not reveal any major abrasion fracture or bloody wounds;

Charge 3 : Gross neglect of duty and reprehensible conduct in failing to report the incident immediately at the Perugavalanthan PS and also to the immediate superiors and tried to hide out the fact of the incident by way of behaving reluctantly in reporting the matter at the Perugavalanthan PS on 31.08.89 at about 10.00 hrs."

10. The Enquiry Officer, Deputy Superintendent of Police, Thanjavur Town has held by his report that all the above stated charges have been proved conclusively.

11. According to the learned counsel for the petitioner, as per the FIR, it has been stated that on 31.08.1989, at about 6.30 a.m, the petitioner PC 258 Selvaraj had given a complaint before the station writer, P.C.841, Gnanaprakasam, which was also registered in the General Diary and the same was perused by the Sub Inspector of the station, A.Udayakumar at 8.30 a.m on the same date. The genuineness of the copy of the FIR in Cr.No.226 / 89 dated 31.08.1989 available in the typed set of the petitioner is not disputed by the respondents.

12. As per the third charge, the petitioner returned to the police station from the scene of occurrence, at 10 hrs. Therefore, as contended by the learned counsel for the petitioner, the third charge stating that the petitioner had returned to the police station on the date of occurrence, at 10 hrs is totally contrary to the averments in the FIR, registered in Cr.No.226 / 89 on 31.08.1989 at Perugavalanthan Police Station. As per the FIR, the petitioner had returned to the police station at 6.30 a.m and gave the complaint about the occurrence to the station writer, 841, which was perused by the Sub Inspector A.Udayakumar at 8.30 a.m on the said date.

13. It is not in dispute that on 31.08.1989 at about 4.45 a.m, when the Revenue Divisional Officer, Mannargudi had come to the police station, seeking guard to be posted at the place of occurrence, where the lorry had been parked, only the station writer and the petitioner PC 258 were alone available and therefore, the petitioner was directed to go to Pamini River Bridge area, the scene of crime, where the lorry had been parked. It is

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

also not in dispute that the petitioner had no arms and ammunition, when he was posted as Guard at the aforesaid spot. The respondents 1 and 2 have stated in their counter that the Revenue Divisional Officer directed the petitioner to guard the lorry, bearing Registration No. TNB 9670 with 216 bags of smuggled paddy and informed him that he would send the Tahsildar and TSP soon to the spot. It is seen that neither Tahsildar, nor the TSP was sent subsequently to the spot. As per the enquiry of the respondents 1 and 2, they took the view that the petitioner was bluffing about the incident and played major part in allowing the lorry with 216 bags of smuggled paddy. But, it is strange to note that in such circumstances, how the criminal case was closed by the authorities, on the ground of mistake of fact, though the alleged occurrence is a serious offence of smuggling huge quantity of paddy. It is seen from the enquiry report that the respondents disbelieved the version of the petitioner on the ground that he had not sustained any fracture or bleeding injuries, though as per the wound certificate and the evidence of the doctor, the petitioner had contusions and complaint of pain at left side of abdomen and he has been dealt with the charge under 3 (b) of the TNPSS (D&A) Rules, 1955.

14. In the counter filed by the respondents 1 and 2, the distance between the Perugavalanthan police station and the scene of occurrence is stated as 1 ½ kms, but in the FIR, dated 31.08.1989, registered in the police station at column number 3, the distance of the said Pamini River Bridge is specifically stated as 2 ½ kms on the North-West of the said police station. Therefore, the particulars furnished by the respondents 1 and 2 in the counter is totally contrary to the particulars given by them in the FIR, prepared at the said police station by the writer and also perused and signed by the Sub Inspector (L&O) of the station on the said date.

15. The learned counsel for the petitioner, based on the materials available on record, vehemently argued that the petitioner has been made as scapegoat by the respondents and that the action was taken against the petitioner for no fault of him, though the medical evidence and the evidence of the sweeper of the police station, who was examined as R.W.1 would support the case of the petitioner about the occurrence. Having closed the criminal case as mistake of fact, the contesting respondents have held that the charges levelled against the petitioner was proved, without any basis and also terminated him from service. In support of his contention, the learned Senior counsel cited the following decisions rendered by the Hon'ble Apex Court :

1. Inspector Prem Chand vs. Govt. of NCT of Delhi, 2007 (4) SCC 566
2. Nand Kishore vs. State of Bihar, AIR 1978 SC 1277
3. Union of India vs. Sardar Bahadur, 1972 (4) SCC 618.

16. In the decision Union of India vs. Sardar Bahadur, reported in 1972 (4) SCC 618, at page number 621, it has been ruled as under :

" As there was no material before the Inquiring

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> Officer to show that P.S.Sundaram mentioned in the cheque is P.S.Sundaram, the Deputy Secretary, we think the High Court was justified in holding that these charges had not been proved. "

In this decision, it has been clearly ruled by the Hon'ble Supreme Court, referring the case in State of Mysore vs. S.S.Makapur, reported in AIR 1963 SC 375, that if there is no material before the Inquiring Officer, though having been found in the enquiry report that the guilt is proved setting aside the said finding by the High Court would be justified.

17. In the decision Nand Kishore vs. State of Bihar, reported in AIR 1978 SC 1277, the Hon'ble Supreme Court held that the Disciplinary proceedings before domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence, i.e., evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries.

18. In the decision, Inspector Prem Chand vs. Govt. of NCT of Delhi, reported in 2007 (4) SCC 566, the Hon'ble Apex Court has held that in a disciplinary proceeding initiated against the appellant therein, in terms of the provision of the Delhi Police (Punishment and Appeal) Rules, 1980, it is necessary for the disciplinary authority to arrive at a finding of fact that the delinquent official was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was wilful in character. It has been further ruled that an error of judgment per se is not a misconduct and a negligence simpliciter also would not be a misconduct.

19. In the instant case, it is not in dispute that the petitioner herein was directed by the Revenue Divisional Officer, Mannargudi to guard the lorry, bearing Registration No.TNB 9670, loaded with 216 bags of smuggled paddy near Pamini River Bridge, where the lorry had been parked at about 4 a.m on 31.08.1989. As per the FIR registered by the concerned police station, the distance between the police station and the spot was about 2 ½ kms and according to the petitioner, at about 5.15 a.m, six accused persons suddenly came out from a nearby bush and after attacking the petitioner and pushed him in a pit, took away the lorry from the said place.

20. As per the charge No.3, framed against the petitioner by the contesting respondents, the petitioner reported the incident only at 10 a.m, but as per the FIR, on the aforesaid date at 6.30 a.m, the petitioner had returned to the police station and gave a complaint before the station writer 841 and the same was also recorded in the General Diary and at about 8.30 a.m, Mr.A.Udayakumar, the Sub Inspector (L&O) of the station inspected the same and also signed the FIR. Therefore, it is Crystal clear

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that the charge has been framed against the petitioner, totally contrary to the facts available in the FIR prepared by the police, in Cr.No.226 / 89 of Perugavalanthan Police Station.

21. As per the charge levelled against the petitioner, the lorry bearing Registration No. TNB 9670 with smuggled paddy of 216 bags was stopped and parked nearby Pamini River Bridge, within the police station limit. The lorry number has been given by them and the name of the lorry is stated as "Sri Kaliamman, Namakkal". Therefore, authorities could have verified the owner of the vehicle, driver and other details and prosecuted according to law, but unfortunately, the criminal case was dropped as mistake of fact for the reasons best known to the respondents herein. After having given the complaint about the occurrence, the petitioner was sent to the Doctor, who physically verified the petitioner and found swelling and other injuries. Merely because the petitioner had sustained only minor injuries, the respondents could not have taken a contrary view that he had colluded with the accused persons without any supporting material and evidence. Tmt.Senbagavalli, sweeper attached to the police station has clearly stated that she had come to the police station around 6 a.m on the said date, saw the petitioner, who had sustained injuries at 6.30 a.m at the police station and immediately she bought tea as requested by him. The evidence of the said witness corroborates the details available in the FIR that the petitioner had returned to the police station at 6.30 a.m and gave complaint before the station writer, which was perused by the Sub Inspector (L&O) of the station at 8.30 a.m on the said date and also signed the FIR. It is unfortunate that the enquiry officer and the other authorities have totally ignored the evidence available on record, but took a totally contrary view against the material evidence available on record.

22. It has been held in the enquiry report, that the charges levelled against the petitioner have been proved, based on which the petitioner was also removed from service by the disciplinary authority. The finding of the Administrative Tribunal, at paragraph No.7 is as follows :

> " The enquiry office has also found that even after his arrival he did not immediately report to the Sub-Inspector, who is his immediate superior; on the other hand, the Sub-Inspector came to know the details from P.W.1. There is a definite finding by the authority / enquiry officer that the report to the police station was at or after 8.00 hrs on the date when the occurrence has taken place around 5:15 hrs at a distance of hardly 1 ½ kms. "

In our view, the finding is totally erroneous and contrary to the facts and materials available on record.

23. As per the FIR registered at Perugavalanthan Police Station in C.No.226/89, on 31.08.1989, signed by the Sub Inspector of the station on the very same day, as stated earlier, the distance between the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Perugavalanthan police station and the scene of occurrence, namely, Pamini River Bridge area is stated as 2 ½ kms on the North-West. Contrary to this fact available in the FIR, prepared at the police station and signed by the Sub Inspector (L&O), the enquiry officer and the disciplinary authority have held that the above distance is hardly 1 ½ kms, without any basis. Had the distance stated in the FIR been incorrect, there could be no necessity for the Sub Inspector (L&O) of the station to approve the FIR and sign the same. Similarly, as per this FIR, on the aforesaid date, the occurrence had taken place between 4 to 5.15 hrs at the said place of occurrence and the petitioner returned to the police station at 6.30 a.m with injuries and gave complaint before the station writer, 841 and that was perused and signed at 8.30 a.m by the Sub Inspector (L&O), Mr.A.Udayakumar. After stating the aforesaid facts clearly in the FIR, the contesting respondents subsequently cannot turn round and say some other version contrary to the FIR. Further, the charge number 3, stating that the petitioner reported the same at about 10 hrs at Perugavalanthan police station on 31.08.1989 is totally an incorrect and erroneous version, since it was not framed, based on the materials available before the authorities. Admittedly, the contents of the FIR filed in the typed set of the petitioner is not disputed by the respondents.

24. It is seen from the recorded evidence of P.W.1, P.C. 841, Gnanaprakasam during his cross-examination that the place of occurrence is situated about 4 kms from the police station and it is a un inhabitant area and the petitioner was found with contusion on his forehead, while he had returned to the police station from the scene of occurrence. It is not in dispute that the petitioner was also issued medical memo, on 31.08.1989 at 8 a.m and the Inspector of Police, L&O, Muthupet had been contacted over phone and informed about the incident, prior to the arrival of the Sub Inspector (L&O) Mr.A.Udayakumar and the FIR was registered by the said Sub Inspector (L&O) at about 8.30 hrs on the date of occurrence. As per his evidence, even VHF set attached to the police station had been removed already, in view of the Bharath Bundh. Though, the petitioner had been on centry duty, as there was no other constable, except the petitioner and the station writer, the petitioner was sent to the scene of occurrence, but no Revenue Official was posted at the scene of crime to assist the petitioner in guarding the lorry for the reasons best known to authorities.

25. As per the recorded evidence of P.W.1, Doctor who gave treatment to the petitioner on 31.08.1989, the petitioner met the doctor with a medical memo issued by the Sub Inspector (L&O) and the doctor found the following injuries on the petitioner :

1. Abrasion on the left forehead measuring 2 x 2 cm.
2. Contusion on the left side face.

and on examination, it was found that the petitioner was affected by abdominal pain. The Doctor has opined that the injuries sustained by the petitioner could have been caused at the time and manner alleged to him by the petitioner and the doctor issued the wound certificate, Ex.P.7.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

26. The evidence of P.W.1, medical evidence of P.W.7 and the evidence of the defence witness, Tmt.Shenbagavalli, women sweeper of the police station that she saw the petitioner with injuries at 6.30 a.m on 31.08.1989 at the police station and bought tea for him at his request have been totally ignored and taken a contrary view against the petitioner, without any basis.

27. Considering the evidence, we are of the view that there is no suspicious circumstance to disbelieve the version of the petitioner about the occurrence. Further, as per the evidence of P.W.6, Deputy Superintendent of Police, Mannargudi and the statement said to have been given by Revenue Divisional Officer before him on 31.08.1989 at about 5 a.m, while the Revenue Divisional Officer was returning from Muthupet, near Pamini River Bridge, the lorry bearing Registration No.TNB 9670 loaded with 216 bags of smuggled paddy was stopped and three accused persons, who were in the lorry, on seeing the officials escaped from the place, however, one accused by name Ramanathan was caught hold of, with the Leyland lorry bearing Registration No.9670 with the name " Sri Kaliamman, Namakkal". Though the contesting respondents have stated that the vehicle used for smuggling is a Leyland lorry, with number and name and three accused were said to have escaped from the lorry, one, by name Ramanathan was caught hold of and as per the evidence of P.W.2, Sub Inspector Udayakumar, on the said date at about 10 hrs, Revenue Divisional Officer, Tahsildar and Taluk Supply Officer came to Perugavalathan Police Station and handed over the accused Ramanathan and on searching him, a cash of Rs.3,020/- was seized and the same was handed over to the Crime Inspector. In such circumstances, we are surprised to note, as to how the criminal case in Cr.No.226 / 89 was closed by the authorities as mistake of fact on 12.05.1992, and proceeded only the departmental enquiry against the petitioner and imposed him capital punishment of removal from service, contrary to the evidence available on record.

28. In the light of the decision reported in AIR 1978 SC 1277 (cited supra), it has been clearly ruled by the Hon'ble Apex Court that suspicion cannot be allowed to take the place of proof even in domestic enquiry.

29. In the light of various decisions of the Hon'ble Supreme Court, we are of the considered view that a Departmental action would not be sustainable in law, if the finding is totally contrary to the evidence and materials available on record and mere suspicion cannot be allowed to take the place of evidence even in domestic enquiry.

30. In the instant case, it is seen from the records that the contesting respondents without following the principles of natural justice have made the petitioner as scapegoat, though the criminal case against the accused persons for smuggling paddy was dropped by the authorities as mistake of fact. It is crystal clear that the findings of the respondents against the petitioner is perverse and totally contrary to the evidence and materials available on record and the Tribunal has failed to consider

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

the same and therefore, we are of the considered view to allow the writ petition and set aside the impugned orders passed by the respondents.

31. Accordingly, the writ petition is allowed and the impugned orders passed by respondents are set aside and we direct the respondents 1 and 2 to reinstate the petitioner with continuity of service forthwith and to meet the ends of justice, the respondents 1 and 2 are directed to pay 50% of the back wages to the petitioner from the date of the suspension till he is reinstated in service.

32. The writ petition is ordered accordingly. No order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

tsvn

To
1. The Deputy Inspector General of Police
Trichy Range, Trichy.

2. The Superintendent of Police
Thanjavur District, Thanjavur.

3. The Tamil Nadu Administrative Tribunal,
Chennai - 104.

+ 1 CC To Mr.A.Thirumurhty, Advocate SR NO.61116

+ 1 CC to the Government Pleader SR NO 61690

W.P.No.25387 of 2002

bs[co]
gp/17.10.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/